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(AREA 061212)

APR 6 1978

Date

Fee \$ 50

CC Washington, D. C.

6 East 43rd Street

New York, N.Y. 10017

Law Offices

Weiss, Rothfarb & Chernofsky

WILLIAM L. WEISS
IRVIN ROTHFARB
CHARLES B. CHERNOFSKY

April 3, 1978

RECORDATION NO. 9307 Filed & Recorded

APR 6 1978 -9 55 AM

INTERSTATE COMMERCE COMMISSION

Attention: Mrs. Lydia Wright

Interstate Commerce Commission
Office of the Secretary
Recording Section
Washington, D. C. 20423

Re: Railway Freight Car Services, Inc., Erie Western Railway
and Trans-Action Associates, Inc.

Dear Mrs. Wright:

You will find enclosed our check in the amount of \$50 payable to the order of the Interstate Commerce Commission together with four copies of a Lease Agreement between Railway Freight Car Services, Inc. as Lessor and Erie Western Railway and Trans-Action Associates, Inc. as Lessee.

Please return to us, upon filing of the enclosed, a receipted copy of same in the stamped, self-addressed envelope enclosed for that purpose.

Very truly yours,


William L. Weiss

WLW:AB
enclosures

RECEIVED
APR 6 9 32 AM '78
CERTIFICATION UNIT

Interstate Commerce Commission
Washington, D.C. 20423

4/6/78

OFFICE OF THE SECRETARY

William L. Weiss
Weiss Rothfarb & Chernofsky
6 East 43rd Street
New York, N.Y.

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 4/6/78 at 9:35am
and assigned recordation number(s) 9307

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

APR 6 1978 -9 25 AM

LEASE AGREEMENT ~~INTERSTATE~~ ~~COMMERCE~~ COMMISSION

THIS LEASE AGREEMENT, made this 1st day of March 1978, by and between RAILWAY FREIGHT CAR SERVICES, INC., a Delaware corporation, ("RFC") as Lessor and ERIE WESTERN RAILWAY, an Indiana corporation and TRANS-ACTION ASSOCIATES, INC., an Illinois corporation (the "Lessee"), as Lessee.

W I T N E S S E T H :

1. SCOPE OF AGREEMENT.

A. RFC agrees to lease to Lessee, and Lessee agrees to lease from RFC, fifty (50) boxcars of the types and descriptions set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto whether for Boxcars or other railroad equipment, each of which when signed by both parties shall be a part of this agreement.

B. It is the intent of the parties to this agreement that RFC shall at all times be and remain the Lessor of all scheduled Boxcars. Lessee agrees that it will

at no time take any action or file any documents which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to facilitate accomplishment of this intent.

2. TERM.

A. This agreement shall remain in force until all of the Boxcars on lease hereunder shall have been terminated pursuant to Section 9. The term of a lease with respect to each Boxcar shall be for ten (10) years commencing upon the date of delivery of such Boxcar as set forth in Section 3A. hereof.

B. If this agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to each Boxcar shall be automatically extended for consecutive periods of twelve months; provided, however, that RFC or Lessee may by written notice delivered to the other not less than twelve months prior to the end of the initial lease term for any scheduled Boxcar or any specified termination date during the extended lease term, terminate this agreement.

3. SUPPLY PROVISIONS.

A. RFC will inspect each Boxcar tendered by the manufacturer for delivery to Lessee. If the Boxcar conforms

to the specifications of the equipment ordered by RFC and to all applicable governmental regulatory specifications, RFC will accept delivery thereof at the manufacturer's facility in Portland, Oregon and shall notify Lessee in writing of such acceptance. The Boxcars shall be deemed delivered to Lessee upon acceptance by RFC; provided, however, that no delivery shall be deemed to have occurred until this Lease shall have been filed pursuant to Section 20(c) of the Interstate Commerce Act. Lessee shall upon such delivery have the Boxcars loaded and delivered at Lessee's sole expense. Due to the nature of railroad operations in the United States, RFC can neither control nor determine if and when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may never have physical possession of any or all of the Boxcars leased hereunder, Lessee agrees to pay to RFC the rental charges set forth in this agreement.

B. Lessee agrees that so long as this agreement is in effect and has not been terminated, Lessee shall give or cause to be given priority to the Boxcars, in the arrangement of all outbound loadings from its sidings over those of such other cars, so as to maximize the utilization of the Boxcars by other railroads.

4. RAILROAD MARKINGS AND RECORD KEEPING.

A. RFC agrees that on or before delivery of the Boxcars to Lessee, the Boxcars may be lettered, in addition to the logo of RFC, with the name or other insignia customarily used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars in the space directly above Lessee's reporting marks.

B. Lessee shall be responsible during the term of this agreement for preparing all documents relating to the registration, maintenance and record keeping functions with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents: (i) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (ii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars.

C. Each and every Boxcar leased hereunder shall be registered at no cost to RFC in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee shall at its expense, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR rail-

road interchange agreements such as car hire reconciliation charges.

5. MAINTENANCE, TAXES AND INSURANCE.

A. Lessee will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing. RFC hereby transfers and assigns to Lessee for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessee at its sole expense and RFC shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to Lessee. All proceeds from such recovery shall be used to repair or replace the Boxcars.

B. Lessee shall make or cause to be made such inspections, maintenance and repairs of the Boxcars as may be required. Lessee shall also make all alterations, modifications or replacement of parts as shall be necessary to maintain the Boxcars in good operating condition throughout the term and on termination of the lease of such Boxcars and to comply with the above requirements. Lessee's obligations under this paragraph shall be at

Lessee's expense, provided, however, that Lessee shall be allowed up to \$500 per year per Boxcar for repairs and maintenance which are necessary in order to keep the Boxcars in good operating condition. Lessee will submit to Lessor invoices from other railroads for any required repairs and maintenance and invoices covering any work done by Lessee, which in Lessee's case shall be limited to direct labor and materials only. All statements shall be submitted on a monthly basis identifying the Boxcar or Boxcars involved on an itemized basis setting forth the cost and charges applicable to each unit.

C. Lessee will at all times while this agreement is in effect and at its own expense, cause to be carried and maintained insurance in respect of all Boxcars subject hereto, and property damage and public liability insurance in amounts and against risks customarily insured against by railroad companies on similar equipment. Such insurance shall be payable to RFC and Lessee as their interests may appear.

6. RENTAL CHARGES.

Lessee agrees to pay on a monthly basis commencing June 1, 1978, a sum equal to 90% of the current ICC rates for per diem, mileage and incentive per diem that the Boxcars would earn that month, if they were off the Lessee's

lines. Mileage charges will be calculated on the basis of the cars averaging 50 miles per day.

Lessee will submit to the Lessor within ninety days after the end of each quarter commencing with the quarter ending June 30, 1978, a statement of the actual Boxcar hire revenues that it has received from other railroads. Lessee shall have the right on reasonable notice during regular business hours to inspect Lessee's records concerning Boxcar revenue. If the amount exceeds 90% of the total it would have received if the Boxcars had been utilized 100% by other railroads then, RFC and Lessee shall each receive one-half of the excess over 90%. Any amounts which are payable pursuant to the preceding sentence shall be paid promptly with the quarterly report.

7. POSSESSION AND USE.

A. So long as Lessee shall not be in default under this agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the

jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either RFC or Lessee may in good faith and by appropriate proceedings contest the application of any such rules, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Boxcars or any interest therein or in this agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. DEFAULT REMEDIES UPON DEFAULT.

A. The occurrence of any of the following events shall, at the option of RFC, terminate this agreement and Lessee's right to possession of the Boxcars:

(i) The nonpayment by Lessee of any sum required to be paid by Lessee within ten days after notice thereof;

(ii) The default by Lessee under any other term, covenant, or condition of this agreement which is not cured within ten days after notice thereof from RFC.

(iii) The ICC shall issue an order or any applicable law or regulation shall be amended, modified or enacted which shall have the effect of eliminating or in any way reducing the incentive per diem charges payable (as, for example, by reducing the period in which such charges are payable) in respect of the Boxcars, unless there is made available to be received by Owner a corresponding increase in per diem payments or other similar car-hire charges at least equal to the reduction or elimination of incentive per diem charges;

(iv) The payments received by Lessee in respect of incentive per diem charges for Boxcars from other railroads shall for any reason whatsoever become unavailable in whole or in part for payment to RFC as herein provided;

(v) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(vi) The filing of any involuntary petition under

any bankruptcy statute against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of a receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(vii) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default, RFC may, at its option, terminate this agreement and may:

(i) Collect the funds directly by instructing Lessee to free up the Boxcars for use by other railroads by filing with the A.A.R. requesting relief from A.A.R. Car Service Rules 1 and 2. In which event Lessee agrees to immediately notify all railroads to send all interchange reports, car hire reports and repair bills to the railroad c/o the Lessor at an address designated by the Lessor. In the event that the above occurs, the Lessor shall have the right to set up a bank account, at a bank of its own

choosing, collect the per diem and pay the repair bills, on which it shall be the sole signatory;

(ii) Proceed by appropriate court action to enforce performance by Lessee of this agreement or to recover damages for a breach thereof (and Lessee agrees to bear RFC's costs and expenses, including reasonable attorneys' fees, in securing such enforcement); or

(iii) By notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon RFC may by its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. RFC shall nevertheless have a right to recover from Lessee any and all rental amount which under the terms of this agreement may then be due or which may have accrued to that date.

9. TERMINATION.

At the expiration or termination of this agreement as to any Boxcars set forth on a schedule attached hereto, Lessee will surrender possession of such Boxcars to RFC by delivering the same to RFC on the line of Lessee. The assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of Lessee. A Boxcar

shall be deemed terminated and no longer subject to this agreement upon the removal of Lessee's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by RFC, either, at the option of RFC, (i) upon delivery of such Boxcars to Lessee's railroad line subsequent to termination of such Boxcar's lease term or (2) removal and replacement of the markings by another railroad line which has physical possession of the Boxcar at the time or subsequent to termination of the lease term as to such Boxcar.

(i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at Lessor's expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by RFC. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ninety (90) days free storage on its railroad tracks for RFC or the subsequent lessee of any terminated Boxcar.

(ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivering, storing and transporting such Boxcars to Lessee's railroad

line or the railroad line of a subsequent lessee shall be borne by Lessee.

10. INDEMNITIES.

Lessee will defend, indemnify and hold harmless Lessor from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar relating to the Boxcars or any part thereof.

11. WARRANTIES AND COVENANTS.

Lessee represents, warrants and covenants that:

(i) Erie Western Railway is a corporation duly organized and validly existing in good standing under the laws of the State of Indiana and Trans-Action Associates, Inc. is a corporation duly organized and validly existing in good standing under the laws of the State of Illinois and they have the corporate power and authority, and are duly qualified and authorized to do business wherever necessary, to carry out their present business and operations and to own or hold under lease their properties and to perform their obligations under this agreement.

(ii) The entering into and performance of this agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to RFC in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which individually or in the aggregate will materially adversely affect nor, as far as the Lessee can now reasonably foresee, will materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this agreement.

12. CONDITIONS PRECEDENT TO EXECUTION OF
SUBSEQUENT LEASE SCHEDULES.

A. No change shall have occurred after the date of this agreement in applicable law or regulations thereunder or administrative interpretations thereof which would make it illegal for the parties to enter into this agreement or any Schedule hereto.

B. There shall exist no Event of Default.

13. INSPECTION.

RFC shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify RFC of any accident connected with the malfunctioning or operation of the Boxcars including in such report, the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigations of the accident. Lessee shall also notify RFC in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. Lessee shall furnish to RFC promptly upon its becoming available, a copy of its

annual report submitted to the ICC, and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC. Lessee shall also furnish to RFC within thirty (30) days after the end of each quarter, unaudited financial statements and within sixty (60) days after each fiscal year a certified balance sheet and income statement.

14. NOTICES.

All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to Lessor: c/o Messrs. Weiss, Rothfarb & Chernofsky, 6 East 43rd Street, New York, New York 10017 and to Lessee:

15. GOVERNING LAW.

This agreement shall be governed by and construed according to the laws of the State of New York.

16. MISCELLANEOUS.

A. This agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of RFC assign this agreement or any of its rights

hereunder or sublease the Boxcars to any party, and any proposed assignment or sublease in violation hereof shall be void. RFC (or its assignee) shall have the unqualified right at any time or times to assign, transfer and set over to any person, firm or corporation all of its rights under this agreement outright (or as security for indebtedness of RFC under a conditional sale agreement with respect to the Boxcars) or otherwise and upon any such assignment all rights of every nature and kind of RFC (or its assignee) hereunder shall inure to the benefit of any such assignee.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this agreement.

C. It is expressly understood and agreed by the parties hereto that this agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.

D. Failure or delay by RFC shall not constitute a waiver or otherwise affect or impair any right, power or remedy available to RFC nor shall any waiver or indulgence

by RFC or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the year and date first above written.

ATTEST:
(SEAL)

Morton J. Talt
Secretary

ATTEST:
(SEAL)

Craig Burroughs
Secretary

ATTEST:
(SEAL)

Jeanne C. Burroughs
Secretary

RAILWAY FREIGHT CAR SERVICES, INC.

By Harvey Polly
Harvey Polly, President

ERIE WESTERN RAILWAY

By Craig Burroughs
Craig Burroughs, President

TRANS-ACTION ASSOCIATES, INC.

By Craig Burroughs
Craig Burroughs, President

50 FT - 70 TON - (XF) BOXCARS with CUSHIONED UNDERFRAMES

CASH / TRANS CODE	CAR			CAR TYPE CODE	YEAR			LEDGER VALUE	BLANK	INDICATOR	PER DIEM RATE		MILEAGE RATE		OWNER'S MARK	LESSEE'S MARK	EFFECTIVE DATE		CUBIC FT. CAPACITY ACTUAL	NORMAL CAPACITY (000)	TARE WEIGHT (00)	LINING	END DOOR				
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CARD 72 TRANS CODE			CAR			INSIDE DIMENSIONS						OUTSIDE DIMENSIONS						UPPER EAVES				LOWER EAVES				EXTREME HEIGHT		SIDE DOOR				SIDE DOOR TYPE	CLEARANCE	BLANK																																								
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STATE OF *NEW YORK*)
) : ss.
COUNTY OF *NEW YORK*)

On this *3* day of March, 1978, before me personally appeared HARVEY POLLY, to me known, who being by me duly sworn, says that he is the President of Railway Freight Car Services, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Irvin Rothfard

Notary Public

IRVIN ROTHFARD
Notary Public, State of New York
No. 31-3376300
Qualified in New York County
Commission Expires March 30, 1979

STATE OF *Indiana*)
) : ss.:
COUNTY OF *Huntington*)

On this *24th* day of March, 1978, before me personally appeared Craig Burroughs, to me known, who being by me duly sworn, says that he is the President of Erie Western Railway, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean M. Voshurgh

Notary Public
President of Huntington Co.
Indiana
My Commission expires 12/18/81